

APPEAL NO. 021289  
FILED JULY 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 1, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the seventh quarter. The appellant (carrier) appealed, arguing that the hearing officer erred in determining SIBs for the seventh quarter. The claimant responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury while in the course and scope of employment on \_\_\_\_\_; that she reached maximum medical improvement on June 21, 1999, with a 19% impairment rating; that she did not commute any portion of her impairment income benefits; that the qualifying period for the seventh quarter was October 10, 2001, through January 8, 2002; and that the seventh quarter is from January 22 through April 22, 2002.

The claimant testified that during the qualifying period for the seventh quarter, she made several job contacts and among those job contacts, she applied for a customer assistant/cashier position on October 16, 2001, and was hired on October 29, 2001. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(c) (Rule 130.102(c)) provides that an injured employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. We have stated that a finding of "direct result" can be sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. We reject the carrier's argument that the claimant's unsuccessful attempt to work at another job earlier in the filing period (prior to starting the job for which she was hired on October 29, 2001) somehow precluded the hearing officer from finding direct result.

Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. It is a factual question as to whether or not the position is relatively equal to the claimant's ability to work.

The hearing officer was persuaded by the claimant's testimony and the functional capacity evaluation report in evidence that the claimant's job was relatively within her

abilities. We conclude that the hearing officer's findings on the good faith and direct result criteria for SIBs for the seventh quarter, and the hearing officer's determination that the claimant is entitled to SIBs for the seventh quarter are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**C.T. CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Susan M. Kelley  
Appeals Judge